

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 7605**

**BILL NUMBER:** HB 1842

**NOTE PREPARED:** Jan 26, 2003

**BILL AMENDED:**

**SUBJECT:** Tobacco Product Manufacturer Regulation.

**FIRST AUTHOR:**

**FIRST SPONSOR:**

**BILL STATUS:**

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill requires a tobacco product manufacturer to:

- (1) certify that it is a participating manufacturer in the Tobacco Master Settlement Agreement or maintains a qualified escrow fund;
- (2) list the manufacturer's brand families of cigarettes; and
- (3) obtain a manufacturer's permit from the Alcohol and Tobacco Commission.

The bill requires the Attorney General to electronically publish a directory of tobacco product manufacturers and brand families. The bill requires a foreign nonparticipating manufacturer to appoint an agent for service of process. It also provides that the Department of State Revenue may: (1) revoke or suspend the license of; and (2) impose a civil penalty on; a distributor or stamping agent that affixes a stamp on or sells cigarettes of a manufacturer or brand family that is not listed in the directory.

The bill allows the state to recover the costs of an action to enforce the certification requirements.

It also imposes a \$5,000 annual fee for a Tobacco Product Manufacturer's Permit. The bill deposits Tobacco Product Manufacturer's Permit fees into the Enforcement and Administration Fund.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:** *Alcohol and Tobacco Commission (ATC):* This bill gives the Alcohol and Tobacco the authority to issue a Tobacco Product Manufacturer's Permit to cigarette manufacturers selling products in Indiana. It is estimated that the ATC will issue between 50 and 100 permits each year. The bill provides that the ATC may not issue a permit to a manufacturer that is neither a participant in the Master Settlement Agreement or one that has not made the required contributions to a qualified escrow account. Additionally, the Commission may not issue a permit to a manufacturer that owes delinquent taxes

or who has violated certain provisions related to the sale of cigarettes. These provisions are expected to have a significant impact on the Commission; however, it is presumed that any additional costs will be covered using the fee revenue generated for the issuance of the Permits (see *Explanation of State Revenues*, below).

*Attorney General's Office:* The bill requires the Attorney General to maintain an annual listing of cigarette manufacturers who are in compliance with state law and are either participants in the Master Settlement Agreement or make the required deposits into a qualified escrow account. The Attorney General would be required to publish the first listing no later than October 1, 2003. The bill requires that the listing be made public on the Access Indiana website. The bill also allows the Attorney General to establish rules to assist with the enforcement of cigarette manufacturers' compliance with state law requiring them to either participate in the Master Settlement Agreement or contribute to a qualified escrow account. It is estimated that the Office could cover any costs associated with the bill's provisions using existing staff and resources. Additionally, some of the Office's costs may be offset through fees recovered from persons violating the bill's provisions. The Attorney General's Tobacco Litigation Division consists of two attorneys and a paralegal. The Division operating budget is approximately \$200,000 each year.

*Department of State Revenue:* This bill could require the Department to develop rules and procedures to assist with the enforcement of tobacco manufacturers' compliance with certain provisions. It is presumed that the Department can absorb any costs associated with the bill.

**Explanation of State Revenues:** *Tobacco Product Manufacturer's Permit:* This bill requires cigarette manufacturers selling in Indiana to obtain annually a Tobacco Product Manufacturer's Permit from the Alcohol and Tobacco Commission (ATC) for a fee of \$5,000. Based on data obtained from the Attorney General's Office and the National Association of Attorneys General, it is estimated that at any one time, approximately 50 to 100 cigarette manufacturers are selling cigarettes in Indiana. Depending upon the number of manufacturers that obtain the permits, the fee is expected to generate between \$250,000 and \$500,000 each year. Revenue generated from the permit would be deposited in the ATC's Enforcement and Administration Fund.

*Penalty Provisions:* The bill prohibits the sale of cigarettes from manufacturers not included on the Attorney General's listing of compliant manufacturers. The Department of State Revenue may impose a civil penalty of up to 500% of the retail value of cigarettes sold or \$5,000 of each violation of this provision. A person who violates this provision also commits a deceptive act actionable by the Attorney General. If convicted, the court may order the sender to pay to the state the reasonable costs of the Attorney General's investigation and prosecution related to the action. A court may also order an injunction. If the injunction is violated, a civil penalty of up to \$15,000 may be assessed per violation. If a court finds that a person committed a deceptive act knowingly, the Attorney General may recover a civil penalty of a fine up to \$500 per violation on behalf of the state.

This bill makes it a Class C misdemeanor to affix a cigarette tax stamp to a pack of cigarettes that is not listed in the Attorney General's directory of cigarette manufacturers and brand families. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

The bill provides that a court must order any profits, gain, gross receipts, or other benefit generated from a

violation of the bill's provisions must be deposited in the Indiana Tobacco Master Settlement Account.

**Explanation of Local Expenditures:** *Penalty Provision:* A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Attorney General; Department of State Revenue; Alcohol and Tobacco Commission.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** National Association of Attorneys General; Jennifer Thuma, Legislative Liaison, Attorney General's Office, 233-6143.

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